Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
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REPLY COMMENTS OF WILTEL COMMUNICATIONS, LLC

Blaine Gilles, Ph. D.
Senior Vice President –Voice
Services and
Strategic Markets
WilTel Communications, LLC
9525 W. Bryn Mawr Street 140
Rosemont, IL 60018
(847) 678-6216

Adam Kupetsky
Director of Regulatory
Regulatory Counsel
WilTel Communications, LLC
One Technology Center TC15
Tulsa, OK 74103
(918) 547-2764

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I. INTRODUCTION AND SUMMARY

In establishing a new regime for intercarrier compensation, the Commission must accomplish three critical goals.

First, it must establish rates that are non-discriminatory, so that a wide variety of industry participants including interexchange carriers ("IXCs"), local exchange companies ("LECs"), voice over Internet protocol ("VOIP") providers, wireless carriers, and others (both large and small) can compete with each other while paying the same interconnection rates for the same interconnection services, irrespective of the point of origin of a call or the technology used in its transmission. Competition must not be skewed artificially by differences in price that are based on monopoly pricing behavior made possible by regulatory decisions.

Second, the Commission must establish a pricing regime that explicitly recognizes the continuing monopoly power of a LEC when it provides others with access to its end-user customer base. As WilTel established in its initial comments in this docket, switched access is a monopoly service and will remain one in the foreseeable future. To alleviate the "market failures" and distortions induced by monopoly pricing, the Commission must constrain both the level of prices and pricing arrangements in this narrow but critical area. "Negotiated pricing" proposed by some LECs would simply afford these firms the ability to discriminate against companies that do not have a countervailing access monopoly of their own – i.e., a local end user customer base. This would effectively reduce the list of overall industry participants to those with sufficient monopoly power to successfully negotiate a low intercarrier compensation rate.

Third, access rates must be "subsidy-free". Unlike the period prior to the Telecommunications Act of 1996, access providers are now in direct competition with their access customers in selling telecommunications services to end users. Thus, from the perspective of a Regional Bell Operating Company ("RBOC") selling long-distance service to a customer in its own territory, the tariffed price of access is completely inconsequential; its bottom line depends on the internal incremental cost of obtaining access to the customer's premise. Moreover, prices marked up in excess of incremental cost constitute a direct subsidy from non-integrated competitors to their vertically integrated LEC rivals. Should the Commission approve pending and potential mega-mergers between RBOCs and the largest IXCs, this problem will ascend from the category of "distorting competition" to the category of "destroying competition".

Virtually all participants in this proceeding have agreed that the Commission must fix the broken intercarrier compensation regime quickly, and the vast majority urge the Commission to do so by adopting a default intercarrier compensation rate applicable to all traffic terminating on the public switched telephone network ("PSTN").[1] Moreover,

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[1] Letter, dated October 5, 2004, from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attachment 2 ("ICF Plan"); XO Comments at 2, 4; Letter, dated May 18, 2005, from Robert B. Nelson, Chair, Committee on Telecommunications, National Association of Regulatory Utility Commissioners ("NARUC"), Elliott G. Smith, Chair, Task Force on Intercarrier Compensation, NARUC, and Ray Baum, Vice-Chair, Task Force on Intercarrier Compensation, NARUC, to The Honorable Kevin Martin,

as WilTel points out herein, achieving the goals, and avoiding the problems listed above will require three principle steps: (a) immediately reduce all intercarrier compensation rates, regardless of current regulatory jurisdiction, to a uniform rate equal to the prevailing reciprocal compensation rate for that geographic region; (b) transition intercarrier compensation rates to bill and keep so that access is eliminated as a service sold to other carriers but, rather, becomes a feature of the local product purchased directly from the LEC by the end user; and (c) prohibit discounts or rebates that would allow some carriers to avoid the initial uniform rate or any final nominal rate. Such an outcome will spur competition by encouraging and making it possible for service providers to compete for retail customers rather than seeking anticompetitive arbitrage opportunities created by the Commission's rules.

II. ACCESS REMAINS A MONOPOLY—REGULATION MUST DIRECTLY ADDRESS MARKET FAILURE—"NEGOTIATION" IS NOT THE ANSWER

All commenters recognize the fundamental problems that plague the existing compensation system. The cost of access to the PSTN continues to be the largest unit cost borne by service providers (and their subscribers).[2] That cost currently varies depending on whether the traffic originated as long distance, wireless, paging, local, VoIP or other services; yet, the actual access service provided by the LEC does not differ among these origination types. Such discrimination skews any competition among

Chairman, Federal Communications Commission ("NARUC Proposal") at Appendix B, Section III.C; BellSouth Comments at 5; Frontier Comments at 6-7..

[2] WilTel's switched access costs are approximately 80% of its total unit costs. The Ad Hoc Telecommunications Users Committee indicates that interconnection charges could be as much as 40% to 50% of the ultimate retail price of service. Comments of Ad Hoc Telecommunications Users Committee ("Users") at 5. Other carriers indicate that their intercarrier compensation costs are declining. See, e.g., Comments of Time Warner Telecom, Conversent Communications Inc, Cbeyond Communications LLC, And Lightship Telecom ("TWT/Cbeyond Comments") at 32. However, WilTel has seen no such decline.

service providers carrying different types of traffic. Moreover, customers have strong incentives to avoid discriminatory prices by mislabeling traffic to obtain the benefit of the lowest available rate classification. Such practices destabilize the market, increase risks to participants, and result in wasteful expenditures by firms seeking to avoid payments and access providers seeking to enforce their pricing through the legal and regulatory process.[3]

The Commission has long recognized the terminating access monopoly power held by LECs.[4] Even the LECs concede this fact.[5] As SBC describes it "The problem is that the *called* party's carrier has both the incentive and the ability to charge the *calling* party's carrier above-cost rates for terminating these calls."[6] This control allows the LEC to impose any conditions it wants in the absence of regulation, and to discriminate between carriers to the extent that regulation gives the LEC the discretion to do so. Thus, LECs have both the incentive and ability to charge unreasonable rates and to discriminate against other carriers.

WilTel has repeatedly discussed the flaws in the current system, which are distorting communications competition today and has urged the Commission to eliminate current discrimination in PSTN interconnection that penalizes service providers who do not offer local exchange services. These same distortions allow LECs to leverage the

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[3] *See, e.g., Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order* (rel. April 21, 2004); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, Order and Notice of Proposed Rulemaking (released February 23, 2005); Southwestern Bell Telephone, L.P., et al. v. VarTec Telecom, Inc., et al., Cause No. 4:04-CV-01303 CEJ (U.S District Court for the Eastern District of Missouri, Eastern Division).

[4] *See, e.g., Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) ("CLEC Access Charge Reform Order").*

[5] SBC Comments at 2; TWT/Cbeyond Comments at 15-18.

[6] SBC Comments at 2.

relative size of their end user PSTN customer base to disadvantage other providers who must terminate to those customers.[7]

Pending mergers between the largest RBOCs and IXCs exacerbate these flaws. If the mergers are consummated, the current intercarrier compensation regime, in which rates drastically exceed costs, will give the merged SBC and Verizon a huge cost advantage over non-integrated rivals, including WilTel. For in-region calls these entities will recognize only the burden of their internal incremental costs of providing end-user access. Meanwhile non-integrated rivals will pay rates inflated substantially above incremental cost. In other words, WilTel and other non-integrated firms will be expected to directly subsidize their RBOC competitors.

In addition, if "negotiated" rates are allowed as Verizon has proposed, there is little to constrain the new "Super-RBOCs" from negotiating preferential rates with each other based upon countervailing monopoly power over termination in their respective territories. Verizon argues that a negotiated intercarrier compensation regime will approximate a market result by recognizing the respective values offered by the interconnection parties. But Verizon's appeal to "market forces" is nothing more than a request to legitimize abuse of market power through discrimination. Conveniently, Verizon could argue that its interconnection with WilTel, or other non-SuperBOCs, offers Verizon less value than Verizon interconnection with SBC.[8] Under Verizon's

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[7] *See* IP-Enabled Services, WC Docket No. 04-36, and Level 3 Petition for Forbearance, WC Docket No. 03-266, Letter, dated February 23, 2005, from David L. Sieradzki, Counsel for WilTel Communications, LLC, to Marlene S. Dortch, Secretary, Federal Communications Commission, Attachment 2. WilTel supports efforts to end these practices in the short term. *See, e.g.*, WilTel Comments at 22. *See also* Letter, dated May 27, 2005, from Karen Brinkmann, counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission. In the long run, the best way to end these practices is through intercarrier compensation reform as set forth in these Reply Comments.

[8] This "value" measurement might work on a strictly local level – if, for example, a CLEC has constructed a local network and has local subscribers that send and receive calls to the ILEC's subscribers in that local

approach, therefore, that company not only could charge WilTel a subsidizing rate for PSTN access, but also could charge a WilTel competitor (such as SBC or other large customer with which Verizon could establish a *quid pro quo*) a lower rate, even though the costs for terminating each carrier's traffic is the same. Striving towards a "market based" system with respect to PSTN termination is nothing more than an invitation to LECs to leverage their monopoly power into other markets.

Moreover, while the Commission's rules may prohibit ILECs from charging discriminatory rates, enforcing these rules through the regulatory complaint process is slow, cumbersome and provides inadequate relief for competitors impacted by discrimination. After attempting unsuccessfully to negotiate with the ILEC to obtain nondiscriminatory access, a requesting carrier then must file an informal proceeding with the regulatory commission. In many cases this is a prerequisite to making a formal complaint.[9] The carrier is then faced with the no-win situation of going through a long, formal complaint process that may or may not result in a finding of discrimination. In the fast-moving world of competing for telecommunications customers, this process inevitably provides the ILEC with an undue competitive advantage.[10]

In sum, far from establishing a free and fair market, the Verizon proposal would allow ILECs to leverage their market power in the local PSTN market into the long

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area. In that case, one might argue that the CLEC with fewer subscribers should have to pay the ILEC because it is "simply experiencing the effects of a competitive loss for the handling of terminating traffic." Intercarrier Compensation in a Diverse Competitive Environment, Economics and Technology, Inc., submitted by PacWest Telecomm., Inc. and US LEC Corp., filed May 23, 2005 ("ETI Update") at 31. But, as WilTel describes herein, that analysis fails with respect to a unified intercarrier compensation regime.

[9] See http://www.fcc.gov/eb/LoTelComp/ltcoccmv.html.

[10] The New York State Department of Public Service ("NYDPS") urges the Commission to base the new intercarrier compensation mechanism on negotiated agreements. NYDPS Comments at 5. WilTel notes that the NYDPS is one of the state commissions that aggressively seeks to enforce LEC obligations such as nondiscrimination. This practice is not uniform or even widely adopted throughout the country, making it extremely difficult to enforce nondiscrimination requirements, especially after *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier*, CC Docket No. 01-338, Second Report and Order (rel. July 13, 2004) ("*All or Nothing*" decision).

distance and other markets. Such market power abuse hurts end users by handicapping competitors who might otherwise vigorously compete.[11] Verizon's proposal should be rejected.

III. THE COMMISSION SHOULD IMMEDIATELY SET INTERCARRIER COMPENSATION AT A UNIFORM, SUBSIDY-FREE RATE AND THEN MOVE TO BILL AND KEEP

To achieve non-discriminatory, subsidy-free prices, the Commission must immediately reduce rates to a uniform rate for all intercarrier compensation and then mandate a transition to bill and keep. This decision would eliminate or sharply reduce the ability of LECs to exercise monopoly power. By setting a low uniform rate based on reciprocal compensation and moving quickly to a zero or near-zero compensation rate the Commission's goals can be accomplished quickly:

- LECs would no longer have the opportunity to seek revenues from competing carriers and therefore to bestow artificial advantages on favored carriers or themselves, nor would ILEC rivals face the specter of subsidizing their largest competitors;
- Service providers seeking PSTN access would no longer have the incentive to manipulate or mask traffic to obtain lower rates; and
- Technology choice (VOIP vs. TDM, landline vs. wireless) would depend solely on the fit of the technology to meet customer requirements rather than the access charges that apply.

[11] Users agree that competition in the market for switched access is not sufficient to discipline LEC behavior. Users Comments at 8-10.

LECs as well as competing carriers would be free to concentrate their efforts on new or higher quality services, improved customer service and other business matters. As a result, end users, rather than regulators, will be able to choose competitive winners and losers.

A. The Commission Immediately Should Reduce Access Rates to a Uniform Price based on Reciprocal Compensation Levels

The ICF plan, as described below, presents a workable model for fixing the present regime in the future; however, its implementation does not achieve "subsidy free" pricing and eliminate the distortion caused by the current patchwork of compensation until its 4-7 year transition is complete. Meanwhile, the industry has been waiting over four years for the Commission to set new intercarrier compensation rules[12], and mergers between the largest LECs and the largest IXC are set to transform the industry and consolidate ILEC market power on a much shorter timeline. Given that the Commission probably will not adopt any intercarrier compensation reform at least until early 2006, the Commission must not unduly delay implementing the benefits of reform. Accordingly, as an initial measure, the Commission should immediately reduce all access rates to a level approximating reciprocal compensation.[13] This step alone would eliminate a number of the arbitrage and discrimination disputes that the Commission is facing and would make it less likely that competitive carriers would have to subsidize ILEC mergers and competitive offerings. The Commission can use this interim uniform rate as a stepping stone in implementing a bill and keep regime in which access charges are eliminated.

[12] The ICF plan was intended to become effective starting July 1, 2005.
[13] For example, the Commission might consider immediately cutting access and reciprocal compensation rates to NARUC's proposed $.001 and then taking steps to move to a bill and keep regime.

B. Bill and Keep Eliminates Arbitrage and Discrimination Inherent in the Existing Regime, Provide Adequate Cost-Recovery for LECs and does not Overburden the Universal Service Fund

Of the proposals before the Commission, the ICF and Western Wireless plans best approach meeting the Commission's goals. Under both of these plans, access charges would be reduced over a number of years to a level equal to reciprocal compensation levels, and then eventually reduced to zero.[14] The ICF plan calls for access charge and reciprocal compensation reductions to $.000175 over 4 years, with access charge cuts targeted initially to divergent intrastate and interstate access charges, and then to full bill and keep within 7 years.[15] Although each plan implements the network architecture portions of their plans somewhat differently, both contain the fundamental requirement that access charges be unified and reduced to zero or near zero over time. Both of these plans, if adopted and implemented, ultimately would (a) ensure that LECs charge the same amount for the same service (regardless of where or how the traffic originated); (b) prevent the regulatory arbitrage that results from differential treatment of the same traffic; and (c) allow communications companies to focus on providing the kind and quality of service demanded by end users.

Contrary to the arguments of those opposing bill and keep, such a mechanism would not prevent LECs from having an opportunity to recover the costs of their services.[16] PacWest and TWT/CBeyond contend that they should be compensated for use of their network. ETI argues that CLECs must be able to obtain revenues from other carriers because that is the only way they can compete with RBOCs that obtain revenues from

[14] ICF Plan at 31-48; Western Wireless Intercarrier Compensation Reform Plan, submitted December 1, 2004.
[15] ICF Plan at 32-42.
[16] SBC, Qwest, Level3 and GCI – all LECs – are part of the ICF or otherwise support bill and keep and therefore do not appear to be concerned about having an opportunity to recover lost access revenues.

their customers.[17] But nothing in the ICF and Western Wireless plans prevents LECs from having the opportunity to recover the costs of their network. Under the ICF plan, for example, LECs are permitted to raise end user subscriber line charges ("SLCs") beyond levels currently permitted to attempt to make up lost access charge revenues. A LEC that raises the SLC to the maximum allowed under the ICF plan may still be able to draw support from an Intercarrier Compensation Recovery Mechanism ("ICRM") funded through the universal service fund.[18] CLECs would have the same opportunity to obtain revenues from end users that choose the LEC to be their local (and perhaps long distance) service provider.[19]

The issue is not whether LECs should have this opportunity, but from whom they should have the opportunity to recover these costs. Bill and keep as well as calling party pays plans recognize that end users benefit from universal interconnection and provide LECs with an opportunity to recover revenues from those end users. This pricing regime already exists in the market for wireless services. The result is robust competition, low prices, and high market valuations for the wireless service providers.

Some argue that bill and keep will result in a substantial increase in the universal service fund.[20] To the extent that LECs cannot recover their costs through rate rebalancing and greater SLC flexibility, both the ICF and NARUC plans (as well as others) rely on mechanisms funded by the universal service fund to provide LECs with a greater recovery opportunity. WilTel agrees that the Commission must work diligently to

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[17] ETI Update at 38.

[18] ICF Plan at 48-73. Of course, a LEC that is unable to increase the SLC to the cap due to competitive pricing pressure would be unable to draw on ICRM funds.

[19] Carriers that successfully obtain customer business would also benefit from reduced long distance rates due to elimination of access charges.

[20] TWT/Cbeyond Comments at 48-49; Rural Alliance Comments at 87.

balance the need for access recovery opportunities with the need for high cost and low income support and the need to minimize the size of the universal service fund. The Commission has a number of proposals before it that, if implemented, would (a) require full compliance by eligible USF contributors, (b) equalize, expand, and rationalize contributions to the USF and (c) rationalize USF disbursements to avoid double compensation in high cost areas.[21] WilTel respectfully suggests that the Commission move forward with those proposals concurrently with or before implementing intercarrier compensation reform.

C. Bill and Keep Will Enhance Competition by Allowing Companies to Focus on Serving Customers

Bill and keep will substantially reduce the need to regulate wholesale relationships and encourage retail competition. Opponents of bill and keep argue that the Commission will still have to regulate end user rates, even if the need for wholesale regulation is eliminated. These opponents are correct that, in a noncompetitive retail market, end user rates must be regulated; however, regulation of end user rates would be required even under a calling party pays regime. Moreover, in areas where competition exists, it is less likely that regulation will be required to set the rates provided to end users. End users are able to switch providers based on pricing and service signals, which will cause competitors to set prices and service levels at competitive levels. Competition under a bill and keep scenario will increase (assuming that ILECs are appropriately constrained),

[21] ICF Plan at 75-81; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking (released December 13, 2002), at ¶¶ 32-44; *AT&T Emergency Petition for Immediate Interim Relief*, WC Docket No. 05-68; Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order (released March 17, 2005), at ¶ 5 (rejecting the Joint Board recommendation to "limit high-cost support to a single connection that provides access to the public telephone network" but otherwise seeking to reduce USF growth).

as companies will be able to focus on serving end users,[22] and compete based on business offerings made by each provider rather than be hamstrung by paying high fees to connect services to their end user's premise.[23]

In addition, by virtue of its simplicity, bill and keep will substantially reduce the operating costs of access producers and customers.[24] Producers will no longer spend millions printing complex, error-prone CABs invoices and policing to ensure that traffic jurisdiction is properly represented. Customers will no longer spend millions auditing, disputing and attempting to minimize such bills – and searching for opportunities to avoid paying them. In the end, end users bear all of these real costs. Eliminating them is a societal good.

IV. THE COMMISSION MUST REJECT OTHER PROPOSALS THAT DO NOT ELIMINATE INTERCARRIER COMPENSATION CHARGES

Other proposals offered as alternatives to bill and keep do not achieve the objective of eliminating discrimination and arbitrage. These proposals call for either negotiated agreements or a higher positive rate, or both. Yet, they all fail to recognize and address the market power held by terminating LECs. As a result, implementation of those proposals would result in substantial market distortions that would not exist under a bill and keep or similar regime.

[22] SBC Comments at 3 ("the ICF plan should *not* increase overall consumer prices,as some suggest; indeed, it should lower them by ensuring that consumers pay directly and efficiently the termination costs they already pay indirectly and inefficiently in the form of passed-through intercarrier compensation.").
[23] ICF Plan at 22-23; SBC Comments at 13 ("by making each carrier substantially more accountable to its customers for the recovery of its own costs, the ICF plan will maximize direct consumer control over the market's evolution.")
[24] Sprint Comments at 2-5.

A. The Internet is not a Viable Model for Intercarrier Compensation Reform

Several entities contend that the Internet presents a viable and effective model for reforming intercarrier compensation. While this model has superficial appeal, it does not adequately recognize the differences between the Internet and the telecommunications industry. As stated earlier, the monopoly power of access providers with respect to customers of such service distorts the outcome of any "negotiation" between them. At least initially, the Internet was formed by the organic development of a market of dozens of firms with small bases of end users, so such market power considerations did not come into play. Now, there are problems emerging in intercarrier compensation for Internet services as well. The Internet backbone business is rapidly concentrating, with larger providers using their market power to negotiate favorable compensation rates with other very large providers. The result is that the largest providers get preferential terms, leading to yet further concentration.

B. Originating Access Charges Do Not Make Sense In A Unified Regime And Encourage Regulatory Arbitrage

Several entities encourage the Commission to maintain an originating access component to the intercarrier compensation regime. According to TWT/CBeyond, "Where two carriers provide service to a customer over the same facilities (e.g., the customer purchases local and long distance service from different carriers), the two carriers should share the cost of the facilities in the form of originating access." WilTel disagrees with the CLECs' premise. Under a bill and keep regime, the only customer for access is the end user. For a call made by an IXC subscriber over the LEC's local network, the IXC is not purchasing service over the LEC's network for resale; the end user is receiving "access" as part of their local service purchase. Clearly delineating this distinction is critical to simplify the current, overly-complex pricing system.

Under the current system, a LEC pays reciprocal compensation when handing a customer call to another LEC but receives originating access when handing the call to an IXC. This divergent treatment of local and long distance providers and traffic epitomizes the need for intercarrier compensation reform. According to SBC, "By requiring long distance carriers ... to pay originating access charges to the calling party's LEC, the ARIC and CBICC proposals would have the effect of attaching long-term significance to the distinction between retail local and long distance traffic."[25] This distinction has caused numerous arbitrage disputes. Indeed, one of the most highly-contested disputes facing the Commission is whether so-called VNXX traffic is long distance traffic subject to originating access or local traffic subject to reciprocal compensation. The Commission is counting on intercarrier compensation reform to resolve these types of disputes, which are unsolvable under the existing regime.[26] Accordingly, maintaining an originating access component would undermine the very purpose of intercarrier compensation reform, which is to eliminate these arbitrary distinctions and allow telecommunications companies to focus on providing telecommunications services.

Arguments to maintain originating access amount to nothing more than another attempt to squeeze revenues from other carriers. Again, a bill and keep regime would address LECs' legitimate concerns that they have a fair opportunity to earn a return on

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[25] SBC Comments at 7-8.

[26] Although BellSouth contends that its proposal would resolve arbitrage issues, it is unclear how it would do so insofar as BellSouth proposes continuation of originating access charges. BellSouth Comments at 31-33.

their investment. LECs could obtain any revenues lost from originating access through rate rebalancing or increased SLCs permitted by the FCC.[27]

V. THE COMMISSION MUST PREVENT DISCRIMINATION RESULTING FROM OFF-TARIFF, EXCLUSIVE AGREEMENTS

Unless and until bill and keep is fully implemented, the Commission must reinforce the provisions of the Act requiring nondiscrimination, especially if the Commission settles on a positive PSTN termination rate.[28] In its Comments and throughout these Reply Comments, WilTel has demonstrated that allowing parties to "opt out" of a uniform termination rate would perpetuate further discrimination and market distortion unless third parties could "opt in" to those arrangements that are more beneficial to the third parties. Simply put, a non-competitive market (such as the PSTN termination market) lacking any real regulatory restraints on exercise of market power incents discriminatory behavior that distorts competition, and current safeguards intended to prevent discrimination in the PSTN termination market are insufficient to prevent such abuse. A "uniform" rate that is not truly uniform is arbitrary and capricious.

Existing practice shows how allowing separate, exclusive arrangements distorts the marketplace. For example, the rates for termination of local calls in Pennsylvania varies widely based on negotiated arrangements. The reciprocal compensation rate for

[27] The same would apply to equal access costs, if any, that LECs currently recover through access charges.
[28] BellSouth proposes a uniform default termination rate of $.0025 for tandem traffic and $.00125 for central office traffic. Under BellSouth's proposal, access rates initially would be set at interstate access in Phase I and reduced to the uniform rate in Phase II. BellSouth Comments at 16-18. NARUC proposes a uniform default termination rate of $.001. NARUC Plan, Appendix C, Section I.3. TWT/Cbeyond propose a rate based on TELRIC (albeit a rate lower that that which exists today). TWT/Cbeyond Comments at 8-15.

traffic exchanged at the Verizon tandem is $.002814 per minute.[29] For traffic exchanged at the tandem between the ILEC and a carrier that has ISP-bound customers, the rate is $.0007 per minute.[30] For the same traffic exchanged between Verizon and Level 3, the rate is $.00045 per minute.[31] Some parties may terminate traffic under a bill and keep regime. Meanwhile, "access" customers pay terminating rates of $.00242 and $.006212 for inter- and intrastate feature group D local switching alone.[32]

Based on this practice, it seems evident that a "uniform" rate under a reformed intercarrier compensation regime will not be uniform at all if the Commission allows LECs to "opt out" through negotiations or other means. As a result, each carrier terminating traffic to the PSTN potentially will have to compete with each other with significant and vastly different PSTN termination costs based entirely on the whim of the terminating LEC. Such regime cannot help but distort the competitive marketplace.

Some parties that favor such regulation-imposed discrimination inexplicably also favor a uniform rate. For example, the Small Business Association ("SBA") approves of a uniform intercarrier compensation rate but urges the Commission to allow, but not require, bill and keep arrangements, so that "small carriers ... have the option of using a unified CPNP."[33] The Commission should understand, however, that "allowing" LECs to use a unified CPNP means forcing those interconnecting with the LEC to pay for

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[29] See Agreement by and between Verizon PNG Telecommunications, Inc., d/b/a Powernet Global Communications and Verizon Pennsylvania Inc. for the Commonwealth of Pennsylvania, Pricing Attachment, at Appendix A.
[30] See Amendment to Interconnection Agreements between Verizon and Adelphia Business Solutions, Inc. (n/k/a TelCove, Inc.) at 8 ¶ 4(b).
[31] See Amendment No. 2 to the Interconnection Agreement between Verizon Pennsylvania Inc. and Level 3 Communications, LLC, at 7 ¶ 2.1.
[32] The Verizon Telephone Companies, Tariff F.C.C. No. 1, Section 6.9.2(A), 3rd Revised Page 6-364, effective July 1, 2003; Verizon Pennsylvania Inc., Pa. P.U.C. No. 302, Section 6.9.3(A), 20th Revised Sheet 240, effective February 1, 2005.
[33] SBA Comments at 12.

PSTN access when its competitors are not. Similarly, NCTA and Mpower argue for a uniform, bill and keep system but then urge the Commission to allow LECs to impose a non-uniform rate on some carriers seeking PSTN termination.[34] Requiring a uniform rate but then allowing LECs to impose or agree to non-uniform rates with selected carriers would arbitrarily give some carriers an artificial advantage over others and distort the competitive marketplace.

If the Commission nevertheless decides to give LECs such an option, the Commission must also prevent discrimination and preserve a level playing field by requiring the LEC to provide the same rate to every party that interconnects with it, regardless of the circumstances. For example, the Commission should hold that the *All or Nothing* rule does not prevent carriers from opting into arrangements that provide for a more favorable intercarrier compensation rate for PSTN termination. This holding would provide the Commission with a mechanism to allow market forces to regulate intercarrier relationships without sanctioning widespread discrimination.[35]

So long as LECs can extract a positive PSTN termination charge from unaffiliated carriers, the Commission must ensure that they do so in a competitively-neutral manner. This is especially important under a unified rate regime. While local carriers could negotiate "reciprocal" rates, terms and conditions for local service, other services lack the same market dynamic. Accordingly, the Commission should (a) prevent carriers from negotiating rates that are more favorable than the default PSTN termination charge[36] or

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[34] NCTA Comments at 6-7; Mpower Comments at 10.

[35] The *All or Nothing* rule is designed to apply to negotiations between ILECs and CLECs and not to negotiations between LECs and IXCs. Among other things, the negotiating history upon which the Commission based its *All or Nothing* decision did not involve IXCs or long distance services. *All or Nothing* decision at ¶¶ 11-17. In any event, many of the positive developments that the Commission predicted in adopting the *All or Nothing Rule* do not appear to have come to pass.

[36] XO Comments at 10.

(b) require carriers to offer the same rates, terms and conditions for PSTN termination that they offer to their most favored customer.

VI. CONCLUSION

The intercarrier compensation system has fallen far behind the state of the industry, leaving telecommunications firms to expend countless hours and expense to needlessly track and categorize minutes, accrue revenues, file and litigate disputes, and discover new ways to arbitrage the outmoded regulations. All commenters in this proceeding agree that the Commission must act now to reform intercarrier compensation in a way that eliminates these problems. In doing so, the Commission must prevent all LECs from abusing their market power and (a) immediately reduce all intercarrier compensation rates to a uniform rate equal to the prevailing reciprocal compensation rate in each geographic region; (b) transition intercarrier compensation rates to bill and keep; and (c) prohibit discounts or rebates that would allow some carriers to avoid the rates paid by their competitors.

Respectfully submitted,

Blaine Gilles, Ph. D.
Senior Vice President –Voice Services and
Strategic Markets
WilTel Communications, LLC
9525 W. Bryn Mawr Street 140
Rosemont, IL 60018
(847) 678-6216

Adam Kupetsky
Director of Regulatory
Regulatory Counsel
WilTel Communications, LLC
One Technology Center TC15
Tulsa, OK 74103
(918) 547-2764

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